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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951.

No. 336

ANTHONY P. GEORGELIS, PETITIONER

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF CLAIMS

WITH 'FOREWORD' AND 'BRIEF' ATTACHED THERETO, OFFERED

IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

FOREWORD

May it please this Court and the Honorable Judges thereof:

Petitioner, after reviewing his petition and brief, recognizes in some instances he used, perhaps, forcible language in setting forth his contentions, and for that reason desires to here assert that he holds each member of the Court of Claims in the highest esteem, and believes that the erroneous decision which makes this petition necessary results from the lower court having approached the problem from an erroneous viewpoint, perhaps influenced to some extent by petitioner's error, as here described.

Petitioner sought information from various sources including the lower court itself, and was led to believe that when a plaintiff waived oral argument in the Court of Claims that the government likewise would be unable to offer oral argument, and for that reason did not appear.

When the certified transcript of record was received petitioner noted for the first time that oral argument had been submitted by the government. Upon making inquiry concerning the nature of such oral argument both the Clerk of the Court and the government has stated that no oral argument was offered, and that the government merely made an oral submission of the case which was claimed not to be prejudicial to plaintiff's interests.

It is difficult to believe that such one-sided oral submission was not prejudicial to plaintiff for assuredly the government stressed those contentions which it presents in its efforts to deny plaintiff the relief he is entitled to by the law, and thus the court was undoubtedly led to the erroneous viewpoint.

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Plaintiff believes that in forming conclusions of law the courts frequently, after the case is presented, first decide the issue from the law and the arguments presented and then search for those authorities which will support the proposed opinion and overcome those authorities and contentions relied on by the loser.

Whether or not the court was led to view the question of law from an erroneous viewpoint by reason of the one-sided submission of the case, it seems to petitioner that all of the contradictions and ambiguousness resulting from the erroneous decision (and which is not present when plaintiff's correct interpretation is adopted) definitely results from the court having adopted an erroneous viewpoint.

May it please this court and the Honorable Judges thereof, petitioner earnestly pleads since this case involves a question of law covered by a remedial statute involving official salary and the language of which is plain and clear and does not contain any ambiguousness nor contradictions of other parts of the instrument or statutes relating thereto, that the Honorable Judges in accordance with judicial practice which requires such laws to be interpreted liberally and any doubt resolved in favor of the officer performing the services under the statute, view from the very beginning the case in this light:

"Has plaintiff filed his petition under the terms of the new amendatory act within a period of six years as required by the statute of limitations? Does the language of the new amendatory act make it permissible to issue a favorable judgment to plaintiff? Does the language convey a common meaning showing the intent of Congress to reassume and enhance the liability of the government to pay the debt to plaintiff by assuming the expense thereof for the United States without the requirement of reimbursement? Does not established judicial precedent require an opinion in favor of plaintiff?"

and not in the following light as argued by the government:

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"While the language 'is susceptible to more than one interpretation' and 'while the language of section 2 is slightly suggestive that Congress intended to provide for retroactive payments to the employees' (quoted from the Court of Claims decisions) how can we restrict and narrow the common meaning of the language, despite the fact that the statute is remedial in character, in order to grant a decision favorable to the government? After all, because of administrative promises, plaintiff did not exercise his legal rights under prior statutes, therefore why should the government bear this huge expense at this late date? Can the bar of limitations be applied to the provisions of the new statute, and the doubt resolved in favor of the government? After all, isn't the administrative grant to the railroads a separate legal matter, despite the fact it has a bearing on the issue here presented?"

May it please this Honorable Court, plaintiff suggests for consideration that plaintiff's rights be accorded the same degree of liberality under the new statute which has been extended by administrative action in conveying an administrative grant, equal to the sum of any expense borne by the government as a result of the Myers and other decisions including that here at issue, in that the Treasury Department made no effort to enforce the requirements of reimbursement prior to, and subsequent to, the Myers decision which made it clear that such requirement of reimbursement was mandatory until later the requirement was, in part, altered by means of the statute here involved.

Respectfully submitted,

Anthony P. Giessler

Anthony P. Giessler,
Petitioner.

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v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF CLAIMS

Anthony P. Giessler, pro se, prays that a writ of certiorari issue to review the opinion entered by the Court of Claims in the above-entitled case on May 1, 1951.

Plaintiff earnestly prays this Honorable Court to reverse and thus nullify THE JUDICIAL LEGISLATION represented by the opinion rendered by the Court of Claims, by extending to the involved statute in accordance with proper judicial practice the common meaning of the language used by Congress in the natural signification of words in the order of grammatical arrangement and which language conveys a definite meaning involving no absurdity nor any contradiction of other parts of the statute when such common meaning is adopted.

Plaintiff believes the learned judges of this court will find it wholly unnecessary to search any further than the language of Section 2 of the involved act to recognize and to so hold:

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1) that the language used is plain and unambiguous;

2) the common meaning thereof conveys a mandatory grant to plaintiff;

3) that such common meaning involves no absurdity nor contradiction of other parts of the statute;

4) that as a remedial statute involving official salary the common meaning of the words must be interpreted liberally;

5) that plaintiff is entitled to recover.

The court will recognize the emergency which caused the new legislation did not relate to compensation to be earned in the future, but to the fact that certain interests faced bankruptcy because the Myers decision made them liable to reimburse the government for past services in an amount said by the government in asking for a writ of certiorari in the Myers case, to be in excess of $8,000,000.

Plaintiff further believes that study of the legislative history of the act, and especially those parts cited by the lower court, support plaintiff's contention that every statute, including that here involved, relating to this subject has been consistently intended by Congress to broaden and to extend the benefits to customs employees and at no time has been intended to deprive them of their constitutional rights to salary earned.

OPINION BELOW * JURISDICTION

The opinion of the Court of Claims was entered on May 1, 1951 (R-17 to 25). A motion for a new trial to enable the questions of law to be certified to the Supreme Court in conformity with its Rule 40 was filed on June 15, 1951 and was overruled on July 9, 1951 (R-25). The jurisdiction of this court is invoked under the provisions of Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

What was the TRUE nature of the emergency which resulted in passage of the new Act?

Whether, under Section 2 of the Act of June 3, 1944, Congress mandatorily acknowledged on behalf of the United States the debt due plaintiff in connection

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with services rendered as a customs inspector as established by the decision in U.S. v. MYERS, for services rendered prior to the act.

Whether such section provided a new grant to plaintiff conditioned only on the amount due for said services.

Whether the relief from reimbursement provided in Section 2 to certain carriers is not wholly dependent on the payment of the new grant to plaintiff.

Whether plaintiff possessed a moral and legal right to payment of the debt prior to the enactment of the new act, for the reason that the treasury should, and could, have enforced the Myers decision by requiring reimbursement from the involved carriers and should have applied the proceeds by paying plaintiff, the government not being limited in its action to require reimbursement.

Whether the appropriation authorized from the general funds of the Treasury was intended to pay the cost of the grant to plaintiff, as well as for other purposes.

Whether the promises of administrative officers to pay, and to extend the benefits of the Myers decision to all, coupled with the 1946 audit of plaintiff's claim and the regular appropriations annually provided for the payment of extra compensation to customs employees, entitles petitioner to payment.

Whether plaintiff is here entitled to recover as claimed, including payment for true overtime services.

SUMMARY OF QUESTIONS PRESENTED

Whether, after acknowledging that the act "is susceptible of more than one interpretation" (Hence, that the language makes a judgment for plaintiff permissible should the court so choose to decide), the court is permitted to defeat the intent of Congress as established by the plain meaning of common words as used in their ordinary grammatical arrangement, for the pur-

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pose of effecting judicial legislation designed to restrict, narrow, and defeat the intent of Congress in connection with a remedial statute involving official salary which should, by reason of judicial precedents, be interpreted liberally on behalf of plaintiff.

Whether petitioner is entitled to recover under the act because of administrative promises to effect payment under the provisions thereof, and because, as indicated in plaintiff's brief, the authority provided by the Act was used in some instances to effect payments of claims similar to that of this plaintiff, attention being invited to the fact that on behalf of the General Accounting Office the Treasury Department caused an audit to be made of the amounts involved in what now appears was an attempt to dispel any doubt which plaintiff might have entertained that such administrative promises were not well intended, for the purpose of depriving plaintiff of the sums due.

STATEMENT OF THE CASE

Plaintiff will not repeat here the facts involved in his claim as they are fully set out in his original petition (R. 1 to 14), but would like to present an outline as to the history of prior statutes and the manner in which they affect the statutes herein involved.

This Honorable Court, by virtue of its decision in the Myers case (320 U.S. 561) is fully acquainted with the fact that all prior statutes relating to payment of extra compensation to customs employees disclose in connection with each new act of Congress, the intent to broaden and liberalize, mandatorily, the benefits to employees, and the court so held.

Myers and his twenty-six associates who filed suit, were but a few of the thousands of customs employees entitled to recovery. It was believed

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by the other employees that a favorable decision to Myers, in view of administrative promises as well as equity and justice, would be administratively extended to all employees alike. The transportation companies who were required by law to reimburse the government likewise so believed.

Consequently, when judgment was issued to Myers, et al, such transportation companies were concerned because of the large amounts of money involved by the requirement of reimbursement. There seems no doubt that when they contacted the administrative officers who were charged with proper enforcement of the law they were referred to Congress as their only source of relief in the hope Congress would amend the law by extending authority to the department to pursue the course which it had formerly followed.

Such transportation representatives thereupon called upon Congress asserting that they faced bankruptcy should they be required to reimburse the government the sums due for past services, and threatened to arouse a public clamor to amend the law by closing their facilities during the times involved. Plaintiff notes that the government here states that some of the facilities along the southern border were actually closed to the public.

It is vitally important here to note that in appealing to Congress to be relieved of the requirement of reimbursement for past, as well as future services, Congress was made aware of the fact that thousands of employees had not been paid the extra compensation due them by law as decided by this court. It is inconceivable, in view of the history of this matter, that the lower court can hold that Congress was not aware of, and did not consider, in passing Public Law No. 328, the right of the employees to their compensation.

It is inconceivable in view of the ordinary meaning of the language of the Act how the lower court can hold that Congress provided relief for the

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transportation companies for both future and past services, using almost identical language in connection with the relief extended in connection with past services as that used in connection with future services, and yet holds that Congress intended payment to employees only for future services, thus conveying the thought that simply because this court had decided the government was liable to payment by virtue of prior statutes, that Congress was prohibited from legislatively approving the decision of the court in connection with past, as well as future, services, by reassumption of the debt.

Plaintiff will not cite authorities here as they are cited elsewhere in his brief, but predicates his interpretation of the provisions of the involved statute on the belief that judicial practice requires remedial statutes involving official salary to be construed liberally, on the belief that when language used by Congress conveys a definite meaning which involves no absurdity nor any contradiction of other parts of the instrument the court is barred from considering legislative intent, on the belief that the legislative history of the involved act conclusively shows that Congress was aware of and did intend to convey a new grant to employees of the sums due recognizing their inherent right under the constitution to payment, and on the belief that the two factors, i.e., liability of the government to pay employees and liability of private interests to reimburse the government, are inseparable.

The lower court holds that Section 2, because of prior statutes having been decided by the court to require payment for the employees, is intended only to provide relief from reimbursement for the private interests. To so hold distorts the common meaning of the language used. Prior to the involved act and up to the time of the Myers decision the department held, in connec-

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tion with past services that the government was not liable for payment of extra compensation to employees unless and until reimbursement had been made by the private interests. This Honorable Court held that Myers was entitled to payment by the government regardless of reimbursement. Congress is presumed, and in this instance certainly was, to be aware of decisions of the courts at the time it reviews and amends prior statutes. By means of Section 2 Congress legislatively recognized the court's action by legislatively approving the court's opinion in connection with past services, just as it legislatively approved the opinion in Section 1 of the act in connection with future services, assuming anew the liability to pay.

The lower court's erroneous opinion involves a holding that Congress desired to broaden the benefits of employees in connection with future services by the inclusion of services rendered at free highways, while at the same time ignoring the fact, though well aware of it, that a part - in fact, a considerable part - of the compensation due plaintiffs including Myers, et al, had become subject to the bar of limitations unless the department, on record as being opposed to payment, chose to pay.

Congress made use of the opening phrase of Section 2 for the sole reason that it desired to provide a cure-all remedy for the entire situation which developed in November, 1929, to ensure payment of the sums due to all employees, despite the bar of limitations. No other intelligent reason can be advanced for use of such phrase, nor can any interpretation other than that advanced by plaintiff of the provisions of the act, be made without involving distortion of the language and contradictions of the provisions effected thereby. Moreover, the department at first acknowledged plaintiff's interpretation was correct, and later reversed its opinion only when it

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realized that an enormous portion of the sums due employees would otherwise be barred from recovery.

STATUTES INVOLVED

The Act of June 3, 1944 (Public Law 328) 78th Congress, Second Session, (58 Stat. 270, 19 USC 1451-a).

31 USC 714.

SPECIFICATION OF ERRORS URGED

The court's opinion in holding that the statute does not provide a new grant and that plaintiff is barred from recovery is erroneous because:

1) After acknowledging in the case O'Rourke v. U.S., 109 C. Cls. 33, that the Act of June 3, 1944 is slightly suggestive that Congress intended to provide retroactive benefits to customs employees, the court below here acknowledges the act "is susceptible to more than one interpretation", hence the court erred by reason of its failure to resolve any doubt in favor of the officer performing the services described in Section 2 of the act (see U.S. v. Morse, 3 Story, 87) as the Court is not empowered to read into the act restrictions and limitations which are not there (U.S. v. Beaver Run Coal Co., 99 Fed. (2) 610, 613).

The court erred:

2) In disregarding established primary principles long accepted by the courts and followed in the interpretation of the language and construction of a remedial statute, thereby distorting the common meaning of plain words, and making what otherwise is clear, ambiguous.

3) In holding that the title of the act cites but a single purpose.

4) In holding that the opening phrase of Section 2 relates only to substantive law thereby disregarding the common meaning of words used in a remedial

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statute relating to official salary, which statute should be interpreted liberally.

5) In failing to note the ambiguousness resulting from its decision in connection with the inclusion in Sec. 2 of the word "highways", there being no carriers involved at free highways and therefore no refunding of reimbursements nor waiving of the requirement of reimbursement involved.

6) In holding that the authorization for appropriation from general funds of the Treasury was intended solely for refunding reimbursements and to pay extra compensation only for services not yet rendered, erroneously overlooking the fact that subsequent to 1936 the compensation was paid directly from the appropriation for customs salaries.

7) In failing to note that the language of Section 2 which provides for waiving of reimbursement is completely dependent on the necessity of paying the official salary due.

8) In holding that the purpose of Sec. 2 "was only to allow the Bureau of Customs to pay Sunday and holiday compensation to customs officers without collecting reimbursement." The court's own language here quoted actually involves a common meaning that the department was authorized (plaintiff claims mandatorily) by the act to pay the compensation due for services previously performed.

9) In failing to hold that Section 2 constitutes an unqualified and unconditional congressional acknowledgment of the debt due plaintiff (4 C. Cls. 271) and erroneously failed to hold that a new grant was provided by such section.

10) In holding certain cases as controlling the issue as such cases involve statutes (and conditions) the language and construction of which are

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glaringly dissimilar from that here used and in one case did not even involve official salary.

11) In failing to note that its narrow decision serves to cause the act to deprive plaintiff of a moral and legal right to official salary due him, which right existed at the time the act was passed.

12) In failing to attach proper significance to the long standing congressional intent that the official salary due under the terms of the statutes must be paid to customs employees.

13) In holding that there is no evidence in the legislative history of the act to show that Congress considered the question of reviving claims and that a new grant was intended and failed to grasp the true meaning of language which it cites from the legislative history of the act.

14) In failing to recognize that even had there been no evidence in the legislative history of the act to indicate a Congressional intent to provide a new grant, the court has no ground to delve into the legislative history since the language used is plain and unambiguous in expressing intent and no interpretation can be permitted to thwart that intent.

15) In failing to regard plaintiff's citation of remarks of Congressman John D. Dingell, a conferee on the committee which drafted the language of the involved act, and which plaintiff quoted in item (21) of his petition.

16) In holding that plaintiff "slumbered" thus disregarding claims filed with the Comptroller General in 1936 and 1946, and disregarding executive promises to pay the new grant to all, and utterly disregarding the fact that plaintiff filed his petition within the statutory period.

17) In failing to consider the effect of promises of executive officers to pay under express and/or implied authority of the act which should be binding

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on the United States.

18) In failing to properly regard evidence contained in public documents available to the court, which was cited by plaintiff showing the executive officers had acknowledged that Section 2 was intended by Congress as a cure-all remedy of the emergency including payment of the debt due plaintiff.

THE WRIT SHOULD BE GRANTED AS IT INVOLVES A QUESTION OF CONSIDERABLE GENERAL IMPORTANCE

The opinion of the lower court, after admitting the act is susceptible to more than one interpretation, so far departs from the accepted and usual course of judicial proceedings that such opinion constitutes judicial legislation which is prohibited and which calls for an exercise of this court's power of supervision. The opinion also involves an incorrect interpretation of a phrase which never before has been judicially interpreted as used in the statute here involved, and deprives plaintiff of constitutional rights to salary earned.

Plaintiff is not an attorney. The same can be said of many of the Honorable Members of Congress who drafted and eventually passed the legislation here involved.

Nevertheless, plaintiff emphatically asserts his competency to grasp the common meaning of the language of the statute which such Members of Congress intended to convey and which plainly conveys the grant claimed by plaintiff.

The principle involved in overcoming the erroneous interpretation which has been made is equally as important to plaintiff as receipt of the sum due. It would be a tragedy to allow a miscarriage of justice by permitting the opinion of the lower court to rest unchallenged. Plaintiff finds such opinion utterly barren of any logical reason for denying judgment in his favor, and the opinion is on a par with the administrative interpretation of prior statutes, declared by this court in the Myers case to be clearly and plainly erroneous.

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Plaintiff earnestly prays this court to grant the writ and render favorable judgment to him, disregarding the fact he is constrained to appear pro se.

A decision favorable to petitioner would require the General Accounting Office to accept new claims, and to reopen numerous old claims of customs employees involving large sums which would total in the millions of dollars since that office is governed by a ten year period of limitations. It is noted that in the Myers case, which did not include sums due employees stationed at free highways, the government in filing its petition for writ of certiorari stated that the sums due aggregated nearly eight million dollars. The sums allowed by the General Accounting Office or by the Court of Claims represent but a pittance of that amount.

Recently the Chief Justice appeared before Congress, which sought his opinion relative to the congressional proposal to establish a code of morals and ethics for the guidance of executive and other employees of the government.

Plaintiff was dissuaded from exercising his legal rights under the provisions of prior statutes by reason of placing trust in written promises of executive officers to apply the provisions of the act herein involved in effecting payment of the amount due. Not until much of the claim was outlawed in the courts did such executive officers contend that the act did not provide for payment, and apparently the promises were made for the sole purpose of preventing payment. One of such officers has been alleged to state that "the Court erred in its decision. Congress erred in enacting the law, and I am going to do everything possible to prevent payment."

Failure to grant the writ and to render a correct interpretation of the statute would be regarded as an encouragement for repetition of such unethical

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practices which constitute a highly important cause for the breakdown of morale in civil service.

The court makes reference to O'ROURKE v. U.S. (109 C. Cls.) in which it admitted that the language of Section 2 of the involved statute, the Act of June 3, 1944 (58 Stat. 270, 19 U.S.C. 1451 (a)), is suggestive that Congress intended to grant retroactive benefits to employees. The court below, after acknowledging here that the act is "susceptible to more than one interpretation" failed to resolve the doubt (which plaintiff contends does not exist) in favor of the employee (petitioner) with respect to his official salary, hence the opinion is untenable and should be reversed as it constitutes a repudiation of those elementary principles in the interpretation of a remedial statute which have long formed the basis of judicial decisions.

By distorting the natural signification of words in the order of grammatical arrangement in which Congress placed them and which convey a definite meaning which involves no absurdity nor any contradiction of other parts of the instrument, the court attempts to judically legislate into the act restrictions and limitations which are not there, and by so doing injects both absurdities and contradictions into the provisions of the act.

In attempting to justify its opinion, the court has failed to correctly interpret those parts of the legislative history of the act on which it relies and ignores the remainder which involves the fact that from the time this type of legislation provided extra compensation for customs employees each and every amendment of the statutes materially broadened the scope of such benefits, including the act here involved which conveys a mandatory congressional grant to petitioner, Congress being well aware from the history of the controversy that while it was not mandatory to require the Treasury Department to extend relief to the private interests that it was necessary to mandatorily compel

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the Department to do that which it fought against, namely, to pay petitioner the sums due him.

In attempting to justify its opinion the court cites certain cases as controlling. Such cases involve a glaring dissimilarity of facts and conditions, as well as the choice of language adopted by Congress when compared with the act here involved. The plaintiffs in such cases failed to seek a writ of certiorari.

Once before, in the Myers case (320 U.S. 561) this court has had occasion to reverse, in part, the decision of the Court of Claims.

Petitioner, in conformity with the rules, will not burden this Honorable Court with any lengthy argument, but will state as briefly as permissible only those contentions which, when correctly considered, must necessarily result in the granting of the writ and in a holding that petitioner here is not barred from recovery of the grant claimed.

Petitioner, for the sake of brevity, moves the writ be granted and the issue determined on its merits as set forth in the accompanying brief, in favor of petitioner.

SUMMARY OF ARGUMENT

The opinion of the court is untenable and should be reversed as it constitutes a repudiation of those elementary principles in the interpretation of a remedial statute which have long formed the basis of judicial decisions.

After stating that the language of Section 2 as a whole is suggestive that Congress intended to provide retroactive benefits, and after stating the act is susceptible to more than one interpretation the court failed to resolve the doubt in favor of petitioner with respect to official salary.

By distorting the natural signification of words in the order of grammatical arrangement in which Congress placed them and which convey a definite meaning which involves no absurdity nor any contradiction of other parts of the

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instrument, the court attempts to judicially legislate into the act restrictions which are not there, and by so doing injects both absurdities and contradictions into the provisions of the act.

In attempting to justify its opinion the court has failed to correctly interpret those parts of the legislative history of the act on which it relies, and ignores the remainder which involves the fact that from the time this type of extra compensation was provided for customs employees, each and every amendment of such legislation materially broadened the scope of such benefits, including the act here involved.

In attempting to justify its opinion the court cites certain cases as controlling. Such cases involve a glaring dissimilarity of facts and conditions, as well as the choice of language adopted by Congress when compared with the act here involved. The plaintiffs in such cases failed to apply for a writ of certiorari.

In the Myers case, the Supreme Court reversed the lower court's opinion insofar as such court believed employees were entitled to extra compensation for services performed at night on week-days when on a regular tour of duty which did not involve service in excess of eight hours. It was because plaintiff recognized the claim in that respect was not provided by law that he resigned as chairman of the overtime committee at Detroit and failed to join Myers in his action in bringing suit, believing that his claim filed with the Comptroller General in 1936 would entitle him to any benefits derived from the Myers decision, b ecause of administrative promises.

No interpretation should be allowed to thwart the intent of Congress in providing these new grants to employees.

Petitioner here invites attention to the mandatory character of the language used in Section 2. Congress was well aware it was not necessary to

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use mandatory language in providing authority to waive reimbursement by the carriers as the history of the controversy shows the department sought by any means possible to extend relief thereto, even to the extent of erroneous interpretation of prior statutes, and including failure to properly require the involved private interests to post the bonds required by law which were intended to save the government from ANY expense in connection with the extra compensation which was provided by the statutes. The danger involved in not requiring the necessary bonds to be posted was specifically brought to the attention of the department by this petitioner, and the failure to recognize the correctness of petitioner's contentions eventually forced the Congress to assume the liability for payment of millions of dollars at government expense by waiving the requirement of reimbursement despite the fact that the statutes originally enacted with the view of the expense being borne solely by the private interests.

Congress was equally aware that it was necessary to adopt mandatory language to compel the department to do that which it fought against, namely, to pay the employees the sums due them.

ARGUMENT

MAY THE COURT BY ITS INTERPRETATION OF THE LAW DICTATE TO CONGRESS A CHOICE OF LANGUAGE, WHEN THE LANGUAGE USED IN A STATUTE IS SUFFICIENTLY PLAIN AND CLEAR TO ACCOMPLISH THE CONGRESSIONAL INTENT MERELY BY GIVING THE LANGUAGE USED ITS ORDINARY MEANING?

The lower court in rendering its decision states: "although susceptible to more than one interpretation, the act itself contains no express waiver of the statute of limitations and no provision for revival of claims that have been barred by the statute". Again the court said: "Had Congress seen fit to expend the jurisdiction of this court by allowing it to adjudicate claims arising more than six years before the filing of suit, it is reasonable

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to assume that it would have done so expressly. 'Any provision of law to the contrary is a reference to substantive law.'"

The lower court held that the opening phrase of the first sentence of section 2 pertains only to substantive law. CLEARLY, such opening phrase is restricted only in that it is applicable solely to the two provisions established by the remaining language of the sentence which are: "

(a) the primary purpose is to convey a grant to employees equal to the amounts due them for services performed prior to passage of the act when rendered to certain private carriers

(b) the secondary purpose is to relieve the involved private carriers of the liability to reimburse the government by having the government assume the expense involved.

EQUALLY CLEAR is the fact that such opening phrase is intended to embrace ALL laws - substantive or otherwise - which might be construed as a barrier to the new congressional intent.

This opening sentence, WHICH IS NEW LAW, expressly defines the compensation which SHALL be paid to customs employees at government expense, limiting such compensation to compensation earned by employees in connection with services performed prior to the act to certain classes of private interests. Congress does not otherwise limit in any way the scope of the opening phrase of the sentence which by removing all barriers to payment of the compensation which it provides, establishes a new grant. It follows therefore, that the language must be given the meaning ascribed to it in common understanding.

Plaintiff does not contend that the act provides for revival of claims, but does contend that the principal purpose of the first sentence of Section 2, in harmony with the cure-all remedy intended by Congress, provides a new grant to plaintiff.

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Plaintiff contends that when Congress adopts plain and unambiguous language to carry out its intent no more should be required by the court.

Congress here by its plain language expressly waived all restrictions by saying "Notwithstanding any provision of law to the contrary". The court's ruling that such phrase pertains only to substantive law, in view of the use of the word "any" creates an absurdity in thus attempting to hold that Congress may not use plain language in briefly describing an all embracive object but must, to accomplish its purpose, make a painstaking research of all laws and judicial decisions pertaining to the subject, the provisions of which might be interpreted adversely to the Congressional intent, unless each such statute the provisions of which are to be waived, be enumerated and properly described in the language of the proposed remedial statute.

Plaintiff does not contend that Congress sought "to expand the jurisdiction" of the court in any manner other than involved in effecting judicially the payment of the new grants provided in the new legislation.

The petition states a cause of action founded on an Act of Congress and also an express contract (see GLAVEY v. U.S., 182 U. S. 595).

The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent. U.S. v. STONE & DOWNER Co., et al, 274 U.S. 225; U.S. v. KATZ et al, 271 U.S. 354.

In Lake County v. ROLLINS, 130 U.S. 662, 670: "to get at the thought or meaning expressed in a statute, a contract or a constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it."

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"When the words of a statute are not clear and admit of two interpretations, any doubt should be resolved in favor of the officer performing services under the statute. " U.S. v Morse, 3 Story 87, Fed. Cases No. 15,820; also 4 C. Cls. 141, 165; 23 C. Cls. 162.

In the Myers case the court said it could not indulge in judicial legislation but must construe the statute as it is written by the lawmaking body. U. S. v Myers 320 U.S. 561.

In U.S. v. Beaver Run Coal Co., 99 Fed. (2) 610, 613, it was held that where an act covers a somewhat broader field than Congress originally intended, the courts are not empowered to read into the act restrictions and limitations which are not there.

"Where general words follow particular words, the rule is to construe the former as applicable to things or persons particularly mentioned."

"If parts of a statute are so mutually connected with and dependent on each other, as conditions, considerations or compensation for each other as to warrant a belief that the legislature intended them as a whole, and thus if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus independent, conditioned or connected must fall with them." Berea College v. Kentucky, 211 U.S. 55.

"It is an elementary rule of construction that all of the parts of an act relating to the same subject should be considered together, and not each by itself." Sutherland Stat. Con. Chap. 344.

"The law means what it says and says what it means. The words of a statute are to be taken in their ordinary and familiar significance and import, and the regard is to be had to their general and proper use." Potter's Dwar. on Stat. and Const., 193; Id. 196.

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"When language used by Congress is plain and unambiguous in expressing intent, the court has no ground upon which it was authorized to delve into the legislative history of the statute." 310 US 534.

"The cardinal rule is to seek the intention of the legislature." Sutherland on Stat. Sec. 363.

"Interpretation is the art of finding out the true sense which the author of the words intended to convey, and when the true sense can be discovered there is no resort to construction. And if the legislature had expressed its intention in the law itself, with certainty, it is not permissible to depart from that intention on any extraneous consideration or theory of construction." U.S. v. Hegsdale, Hemst. 497, Fed. Case No. 16,113.

"There is an implied contract to pay salary that has already accrued which is protected by the United States Constitution." 116 U.S. 131.

"Where a statute creates a right, and also provides the remedy, the latter is exclusive, it implies a negation of any other." Camden v Allen, 2 Dutch, 398.

"This remedial statute (Public 328) is intended to correct the mistakes and omissions of the Secretary of the Treasury by reason of his failure to pay the compensation due." Buck v Eureka, 97 Cal. 135.

"It is not allowable to interpret what has no need of interpretation. The act read by itself, and/or in connection with other statutes pertaining to the same subject, is clear, certain and unambiguous. If an act violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. When the words of a provision are plainly expressive of an intent not rendered dubious by the context, no interpretation can be permitted to thwart that intent,

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the interpretation must declare it, and it must be carried into effect as the sense of the law.

"An instrument must be considered as a whole, and the general intent should be kept in view in determining the scope and meaning of any part. Where the sense is doubtful the court should lean to that sense which is most agreeable to justice and the spirit and reason of the law. Words and clauses in different parts of a statute must be read in a sense which harmonizes with the subject matter and general purpose of the statute. The subtle signification of words and the niceties of verbal distinction furnish no safe guide for construing an act of Congress." Rhodes v Iowa, 170 U.S. 412.

"The history of an act should be considered in the interpretation and construction as it throws much light on the meaning of words. Where a particular class of persons or things is spoken of, and general words follow, the class first mentioned is to be taken as the most comprehensive, and the general words treated as referring to matters 'ejusdem generis' with such class, the effect of general words when they follow particular words being thus restricted." Broom's Legal Maxims (side page 65.)

(2) NECESSITY OF CONSIDERING SECTION 451 of the Tariff Act of 1930, in conjunction with new act.

A study of the provisions of Section 451 of the Tariff Act of 1930 (Sec. 1451 U.S.C.Title 19) will readily show that it is intended for a plurality of purpose, BUT CHIEF OF WHICH is the requirement to pay the involved extra compensation to the employee, the secondary provision being for the purpose of requiring reimbursement to the government by the private interests, and the third provision being for the purpose of requiring bonds to be filed by the private interests to ensure the expense involved by the payment of extra com-

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pensation to the employees by the government was borne by such private interests.

Please note that the title of Section 451 of the Tariff Act refers to "EXTRA COMPENSATION", - not to reimbursement, nor to the filing of bonds.

(3) WHAT CONGRESSIONAL INTENT IS DISCLOSED BY MEANS OF THE TITLE AS WELL AS THE BODY OF THE ACT?

The title of the act reads "An Act to amend Section 451 of the Tariff Act of 1930, and for other purposes." Clearly a plurality of purpose is intended. A study of the language of the act shows the common meaning intends:

1) to extend the benefits of the judicial decision in the Myers case to employees stationed at free highways, for services performed BOTH PRIOR TO, AND SUBSEQUENT TO, passage of the act.

2) to extend relief to certain classes of carriers from the liability of reimbursement for compensation for services rendered BOTH PRIOR TO, AND SUBSEQUENT TO, passage of the act, but making such relief absolutely conditional on the payment by the government at government expense of the sums due to employees for such services for the periods BOTH PRIOR TO, AND SUBSEQUENT TO, passage of the act.

3) to allow refunding of certain reimbursement which had been made

4) to require the government to force all those private interests who were not exempted from the liability of reimbursement, to reimburse the government for compensation due for services rendered BOTH PRIOR TO, AND SUBSEQUENT TO, passage of the act.

All of these purposes have been acknowledged by the Treasury Department to be correct in EVERY particular. See petitioner's brief, item (17) Record page 6; item (26) record page 10; item (27) record page 10, item (28) record page 11.

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Section 2 of the Act of June 3, 1944 in amending Section 451 of the Tariff Act must be read in conjunction therewith. Since the principal purpose of the original statute is the payment of the compensation to the employee, and since the principal purpose as conveyed by the common meaning of the language used in Section 2 of the new amendatory act, all mandatorily provide for payment to the employee of the extra compensation - how is it permissible for the court to restrict such language by ignoring and denying the right of petitioner to payment?

The opinion of the lower court as expressed in the last paragraph of the record, page 20, which is continued on record page 21, holds that the act pertains solely to future services in connection with the payment of the extra compensation, the court showing an utter disregard to the significance of the new statute being divided into three sections for the specific purpose of providing for payment of future services in Section 1, and also providing by the language of Section 2, which follows almost an identical pattern as that used in Section 1, for payment for services rendered prior to the act, in order to accomplish the cure-all remedy intended.

(4) IN VIEW OF THE FACT THAT CONGRESS PLACED NO RESTRICTION IN ITS USE OF THE WORD "ANY" IN THE OPENING PHRASE OF SECTION 2, MAY THE COURT JUDICIALLY LEGISLATE BY HOLDING THAT THE OPENING PHRASE IS RESTRICTED TO SUBSTANTIVE LAW?

The court said "the statute of limitations was not considered, and the quoted phrase had no reference to it. ** We shall not attempt to imply therefrom an extension of the jurisdiction of this court."

In so holding it is apparent that the court failed to remember, refer to, and consider the testimony and history of the Myers (320 U.S. 561) cases, in which it is repeatedly shown that the matter of unpaid claims for extra compen-

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sation for customs employees has been brought to the attention of congress in connection with the Customs Administrative Act of 1938 and other proposed legislation including the history of the involved act itself.

The court ignored plaintiff's brief wherein it was shown that employee representatives were present for the purpose of protecting and securing payment of their claims during the various hearings and conferences held by congressional committees and with members of congress and the department in connection with this act.

Plaintiff cannot conceive how the true facts of the case can be so completely ignored despite the preponderance of the evidence that Congress was aware of, and did consider in drafting the act, the rights of employees.

The best proof of whether congress did consider the statute of limitations is evidenced by the use of the word "any" in an all-embracive sense, and the remaining language of the first sentence of Sec. 2 clearly provides a new grant.

Plaintiff contends that it would be more reasonable to hold that had congress considered only substantive law by the use of the opening phrase it would have used the words "any substantive law" rather than to follow the suggestion of the court which in effect would require congress to enumerate any and all laws as well as regulations issued in conformity therewith, which it wished to waive by means of the phrase involved.

The court's opinion involves nothing short of judicial legislation which is prohibited.

(5) MAY THE COURT BY ITS INTERPRETATION OF A REMEDIAL STATUTE APPLY OTHER THAN THE PLAIN AND ORDINARY MEANING OF WORDS AND CONSTRUCTION OF LANGUAGE, AS COMMONLY KNOWN AND USED, WHEN NO AMBIGUITY IS INVOLVED, IN ORDER TO ESCAPE JURISDICTION?

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The court's action in holding plaintiff's petition to be barred by the statute of limitation is made only with utter disregard of the common meaning of the plain language adopted by congress in providing a cure-all remedy for the emergency situation, and should be reversed and judgment for plaintiff made.

Plaintiff here invites attention to the mandatory character of the language used in Section 2. Congress was well aware itwas not necessary to use mandatory language in providing authority to waive reimbursement by the carriers as the history of the controversy shows the department sought by any means possible to extend relief thereto, and Congress was equally aware that it was necessary to adopt mandatory language to compel the department to do that which it fought against, namely; to pay to employees the sums due them.

(6) AS NO CARRIER WAS INVOLVED IN CONNECTION WITH HIGHWAYS AND THEREFORE NO REIMBURSEMENT WAS INVOLVED, WHY DID CONGRESS INCLUDE HIGHWAYS IN THE PROVISIONS OF SECTION 2 UNLESS A NEW GRANT TO THE EMPLOYEES AT GOVERNMENT EXPENSE WAS INTENDED?

The inclusion of the word highways is an absurdity as found in Section 2 unless a new grant was intended as plaintiff contends, as reimbursement at highways had never been required; could not have been required at time of passage of the legislation for past services, and therefore no refunds of reimbursement nor waiving of the requirement of reimbursement was involved.

(7) WHAT EFFECT DOES ADMINISTRATIVE ACKNOWLEDGMENT IN 1950 OF DEBT DUE PLAINTIFF HAVE?

Petitioner believes that a correct interpretation of the Act of June 3, 1944 will result in a holding that he is not barred from recovery of a new grant which is provided by the language thereof, but offers the following argument for consideration should such action be necessary:

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On February 20, 1950 the assistant collector of customs at Detroit, Michigan, wrote plaintiff, in part: "a general calculation and tabulation was made covering every inspector on the record who might have a claim to overtime. Your name appears in this tabulation and shows the period of computation from 9-28-31 to 6-30-39, total amount $3,647.67."

Such calculation was made because the department promised to extend the benefits of the Myers decision to all employees in accordance with Public 328 as stated in the department's letter to Senator Vandenberg referred to in (26) of plaintiff's petition.

The implication found in opinion 18 C. Cl. 382 is that promises of executive officers when made under express or implied authority of acts of Congress are binding on the United States.

Under the "Rules of the House of Representatives" it is submitted that once an audit under law is performed it is considered an award and judgment and for seventy years it has been held that auditing under authority of law to be "authorization" for the appropriations for the payment of claims.

(See pars. 837 and 838 under rule XXI as published in: Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, Seventy-Fifth Congress, House Document No. 496, p.387, 74th Congress, 2nd Session," in conjunction with the fact that subsequent to the auditing of plaintiff's claim each regular annual appropriation of funds for the Bureau of Customs included the appropriation of funds for the specific purpose of paying extra compensation to customs employees. (See Sec. 717 USC 31)).

According to the preface of the above-cited manual (see Hinds' Precedents of the House of Representatives, vol IV) it should be noted that Congress classifies "claims audited under authority of law" together with "judg-

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ments of courts certified to Congress in accordance with law".

Such claims carry an inherent authorization and do not require a specific authorization.

It should be noted that since the question of law was judicially determined in the Myers case the functions of the Secretary of the Treasury and the Comptroller General in connection with paying the amount due plaintiff is solely ministerial and not quasi-judicial, and that the partial payment allowed plaintiff by the General Accounting Office was undoubtedly made under the authority of the Act of June 3, 1944.

(8) DOES NOT CONGRESS IN SECTION 2 ACKNOWLEDGE THE DEBT TO EMPLOYEES AND DOES IT NOT PROVIDE THAT THE DEBT SHALL BE PAID FROM AN APPROPRIATION OF THE GENERAL FUNDS OF THE TREASURY?

The language clearly conveys an acknowledgment of the debt and provides for payment from the general funds of the treasury.

Were not such the intention of Congress, rather than to adopt the choice of language suggested by the court in connection with its comment that had congress intended to waive the statute of limitations it would have done so expressly, plaintiff suggests it would be more reasonable to assume that congress would not have provided that the extra compensation for prior services shall be payable by the United States as it had just been legislatively determined that existing law already provided for such payment. Rather than the language used congress need only have briefly provided that no reimbursement shall be required from the involved classes of carriers for services rendered both prior to, and subsequent to, passage of the act.

"An appropriation for the payment of barred claims was a new promise to pay, founded on the old consideration." Sanderson v. U.S.,1906, 41 C. Cl. 230.

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"Where an action is founded upon a statutory right, the statute of limitation begins to run from the time when the appropriation for the payment of the claim first becomes available." (hence f.y. 1945). 26 C. Cl. 312.

"An unqualified and unconditional acknowledgment of a debt by congress, not merely acknowledging the justice of the original claim, but showing positively that the debt was due in whole or in part, took the claim out of the statute of limitations." 4 C. Cl. 271.

(9) PRIOR TO THE ACT OF JUNE 3, 1944 WAS NOT THE GOVERNMENT MORALLY AND LEGALLY OBLIGATED TO ENFORCE THE COURT'S DECISION IN THE MYERS CASE BY REQUIRING REIMBURSEMENT TO BE MADE BY THE CARRIERS FOR SERVICES RENDERED THERETOFORE, AND TO PAY THE SUMS COLLECTED TO THE EMPLOYERS? DOES NOT WAIVING OF THE REQUIREMENT OF REIMBURSEMENT THUS DEPRIVE EMPLOYEES OF THEIR RIGHTS TO SALARY DUE UNLESS IT IS ADMITTED THAT THE ACT ACCEPTS THE DEBT FOR THE GOVERNMENT AT ITS OWN EXPENSE?

Regardless of the statute of limitations this plaintiff had a moral and a legal right to expect the government to enforce the terms of the Myers decision by requiring reimbursement from the carriers, by suit, if necessary. Upon the payment of such reimbursement this plaintiff had a moral and a legal right to expect payment from the government of the sums thus collected for his account. The government was not barred from recovery in the same degree as was plaintiff. Plaintiff insofar as this court is concerned was limited to six years; not so the government in requiring reimbursement. Plaintiff insofar as the Comptroller General was concerned was limited to ten years. Plaintiff filed a proper claim with the Comptroller General in August, 1936, and by virtue of the ten years limitation governing that officer was entitled to full payment of his claim which began in November, 1929. The Comptroller General refused to open a claim in 1936. Plaintiff filed a second claim on Jan. 16, 1946. In 1950 the plaintiff petitioned the Comptroller General to certify

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his claim to the Court of Claims. The Comptroller General then allowed the claim in part and paid the sum due for services subsequent to Jan. 16, 1936, disregarding the claim filed in 1936.

The restrictive interpretation of Public Law 328, in lieu of accepting the clear mandate of congress which acknowledged the moral and legal rights of plaintiff and accepted the expense of payment by the government without reimbursement by providing the new grant in Sec. 2 of the act, thus serves to deprive plaintiff of his aforesaid rights.

Nowhere in the entire history of this and prior legislation is there any indication that congress passed any provision intended to limit, restrict, or remove the rights of employees to their salary.

The court's opinion is untenable and should be reversed.

(10) SINCE SECTION 2 PROVIDED FOR REFUNDS TO BE MADE OF REIMBURSEMENTS WHICH HAD BEEN PLACED IN SPECIAL DEPOSIT ACCOUNTS, AND ASSUMING THAT THE EMPLOYEES WHO PERFORMED THE SERVICES IN CONNECTION THEREWITH WERE PAID, WERE NOT SUCH EMPLOYEES PAID UNDER THE PROVISIONS OF THE NEW ACT SINCE THE DEPARTMENT HAS NEVER EXTENDED THE BENEFITS OF THE MYERS DECISION BY APPLYING PRIOR STATUTES IN EFFECTING ANY PAYMENT TO CUSTOMS EMPLOYEES FOR SERVICES RENDERED PRIOR TO THE NEW ACT WHICH SERVICES WERE INVOLVED IN THE CONTROVERSY?

Reimbursements were to be refunded, hence paid from the special deposit accounts in which they had been placed pending clarification of the court's decision. Therefore employees were paid at government expense from the general funds of the treasury. If they were not so paid as a result of refunding then the act of a liberal congress has been used in depriving them of the sums reimbursed, placed in special deposit account, and then refunded. If they were paid it is clear that payment was made under the provisions of the new act as the department has consistently refused to extend the benefits

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of prior law in payment of services rendered prior to the new act, and the department earlier admitted the new act provided authority to effect payment of all compensation earned prior to the act.

(11) ARE NOT THE QUOTATIONS CITED BY THE COURT WHICH WERE TAKEN FROM THE LEGISLATIVE HISTORY OF THE ACT MORE SUSCEPTIBLE OF SUPPORTING PLAINTIFF'S CONTENTIONS IN VIEW OF THE PLAIN LANGUAGE OF THE ACT ITSELF THAN THE RESTRICTIVE INTERPRETATION OF THE COURT?

The court said (Record, page 23) "Nowhere does it appear that either house of Congress, or any of the committees that considered S. 1758, or any of the bill's individual sponsors, considered that they were doing more than making payable to customs employees Sunday and holiday compensation without the necessity that the Government collect such amount from the facility serviced."

Petitioner asserts that the court's assertion is faulty only in that it refuses to recognize that the emergency situation which was created by the Myers decision did not involve future services.

Insofar as future services were concerned the various private interests were in a position to protect themselves, as is readily discernible, by raising their fees where necessary to cover their increased expense caused by their liability of reimbursement.

The vitally important emergency which confronted them and which the Court ignores was the fact that such private interests were suddenly confronted with the fact that since they had relied on the accuracy of the department's interpretation of the law and had failed to set aside funds during the many years of the controversy from 1929 to the time of the Myers decision in 1944, the court's decision that the department's interpretation was erroneous placed them in a position where they faced bankruptcy because of an aggregate debt of over

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eight million dollars as admitted by the government. Therefore, insofar as the emergency situation which is acknowledged by the court as the cause of the enactment of the new legislation is concerned, it is plain that the remedy lies chiefly in Section 2 rather than in Section 1 as held by the court; and by the language of Section 2 there can be no honest contention that Congress did not recognize the inherent rights of employees to their earned salary as being more important than the relief to the private interests, for the common meaning of the language used clearly makes the grant to employees primary and the relief to the private interests conditional on the payment to the employees. It is clear that the common meaning of the language used in the first sentence of Section 2 conveys a grant to employees even without the use of the opening phrase of the sentence "notwithstanding any provision of law to the contrary". However, Congress added that phrase for the specific purpose of making it clear that despite any law to the contrary the mandatory provision for payment to the employees must be carried out.

In view of the true circumstances relating to the emergency brought to the attention of Congress shown above, it is absurd to hold that Congress was not aware of, and did not intend a grant by the provisions of Sec. 2, the debt due petitioner.

The court in its decision stated "it does not appear that Congress was even aware that such long-pending claims existed." (Record, Page 23.)

Consider the effect of such a statement in view of the following:

Congress was aware that the Myers decision held that prior statutes required the carriers to reimburse the government and that such monies by administrative practice until 1936 were deposited in special deposit accounts by

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the department which then drew against such account in making payment of the compensation to the employees. After 1936 the compensation though made from the regular appropriation was required to be refunded by the employee in the event reimbursement from the carrier was not received.

It is evident from the provisions of Sec. 2 that Congress was aware that such reimbursement had not been required for many years during the period of the controversy. The legislative history of the act shows that the representatives of the carriers told congressional committees considering the legislation they believed the expense for both past and future services should be paid by the government, and some claimed that they would be forced out of business were demands made to reimburse the government to enable payment to be made to the employee for past services.

The court's opinion would involve a congressional belief that the department had applied the benefits of the Myers decision to all for the entire period of the controversy, and there is nothing in the history of the act which would give birth to, or support, such an erroneous belief.

The court's quotation of Senator Taft's remarks that the purpose of the bill was to deal with an emergency does not establish HOW Congress dealt with such emergency. The language of the act and its construction establishes the manner in which Congress acted. Senator Taft is quoted as remarking that the committee decided the emergency did not permit time to consider any amendments which would alter the extra compensation in speaking of services to be performed IN THE FUTURE and he continues by mentioning the survey required by Section 3 of the act to be conducted by the Bureau of the Budget.

The court's reference to the language used by Representative West shows that the bill established the principle that (1) the services should be pro-

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vided at the expense of the government and (2) that reimbursement should not be required from the carriers. The language of the act itself shows that Congress deemed it a requisite, in waiving reimbursement for services already performed, to acknowledge the debt to employees by mandatorily providing a new grant conditioned on the amounts involved.

Assuredly the court after examining the legislative history of the act, selected therefrom those parts of the record which it believed most capable of supporting the opinion of the court.

Where, in the remarks of Senator Vandenberg on the floor of the Senate when he requested the Senate's unanimous consent to consider the bill out of order, does he make any statement referring to the waiving of the requirement of reimbursement on behalf of the carriers? On the contrary, his entire summation pertains to the acceptance by the government of the liability for payment of the extra compensation for services rendered both subsequent, and prior, to the act. The relief to the carriers was accomplished as an incident of the grant to the employees.

Senator Vandenberg's remarks quoted by the court, coupled with the language of the act itself, forcibly lends emphasis to plaintiff's contentions. He is shown as having summed the bill up by stating that it required, first, payment by the government to the employees; second, by certifying to the customs employees the pay required by reason of the Myers decision; third, a survey by the Bureau of the Budget. The senator continued by saying: "This bill meets the situation in All its aspects." Plaintiff has shown in his petition and brief filed with this court, and the records of the Myers case also show, that plaintiff personally had received the continuous support of Senator Vandenberg for payment of this compensation as early as 1935, as well as from Congressmen

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Dingell who as a member of the Ways and Means Committee was also a conferee on this legislation.

The court's interpretation of Senator Vandenberg's remarks is clearly erroneous when comparison is made of such remarks to the language and construction of the act. Item (1) of his summation applies jointly to the provisions of sections (1) and (2) of the act; item (2) of his summation applies solely to Section (2) of the act; and item (3) of his summation applies to Section (3) of the act.

The senator's remark that the bill meets all aspects of the situation presented by the emergency is wholly incorrect when payments to employees for services described in section 2 are thus excluded by the court.

The court apparently construes item (2) of the senator's summation to relate only to the "rates" of pay of custom employees as established by the Myers decision. As applied by the court such construction would inject an unnecessary duplication of that language in the act since it is found in both sections (1) and (2), the repetition in section 2 being superfluous when the provisions of such section are confined to the extension of relief solely to the classes of carriers mentioned.

The reference in section (1) and (2) to rates of pay constitute a legislative approval of the Myers decision.

The Merriam Webster dictionary definitions of the word "certifying" used by Senator Vandenberg which are most adaptable to the intention the senator meant to convey are "to make certain, as a fact; to assure; to endorse authoritatively." The senator's use of the word "certifying" was intended to convey the meaning that Congress proposed to assure custom employees of their pay for services previously performed, by the language of section 2 of the Act.

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"The judiciary cannot go behind an Act of Congress, to show motives of legislature, or from whence it derives its knowledge" (Baker v U.S., 27 F 2nd 863, at 876, citing U.S. v Price, 116 U.S. 43).

(12) DOES NOT SECTION 2 OF PUBLIC 328 CONVEY A NEW GRANT TO PLAINTIFF WHICH GRANT IS SUBJECT TO THE JURISDICTION OF THE COURT AND NOT BARRED BY THE STATUTE OF LIMITATIONS AS PLAINTIFF FILED HIS PETITION WITHIN SIX YEARS FROM THE DATE OF PASSAGE OF THE ACT?

By extending to the language used in the act its common meaning, by keeping in mind the liberal attitude of congress throughout the entire history of this type of legislation for the benefit of customs employees, and by careful consideration of the questions and arguments hereinbefore presented in their logical sequence, a fair and impartial interpretation must involve a complete reversal of the opinion rendered and judgment for plaintiff.

(13) IS THERE NOT A GLARING DISSIMILARITY BETWEEN THE CASES CITED AND RELIED ON BY THE COURT AND THE STATUTE HERE INVOLVED?

Plaintiff here submits that the only similarity between the cases cited and relied on by the lower court rests in (1) all plaintiffs sought payment of sums due them of which payment had been denied, by means of erroneous rulings of administrative officers and (2) the admission in the court's decisions in connection therewith that the statutes in question entitled plaintiffs to the relief sought were it not for the bar of limitations.

Plaintiff believes it worthy to note that neither Grant nor Caudle filed petitions for writ of certiorari, as it is conceivable that in one or both cases the application of the bar may have been set aside on appeal.

Plaintiff invites attention to the following glaring dissimilarities between the case here involved and these cases relied on by the court:

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O'ROURKE v. U.S., 109 C. Cls. 33

In this case the court held it was not necessary to interpret the act of June 3, 1944 and did not do so, and therefore cannot be held as controlling. It is worthy of note that the court said that section 2 of Public 328 as a whole is slightly suggestive that Congress intended to provide retroactive benefits. Grant v. U.S., 79 C. Cl. 294.

Plaintiff Grant sought payment of sums improperly withheld from his salary from 1909 to 1922 as an inspector of the Isthmian Canal Commission and by the Panama Canal in connection with deductions made in the amount of his retired pay as a warrant machinist in the Navy. His petition was filed on June 28, 1929. The plaintiff contended that the acts of May 31, 1924 (43 Stat. 245) and March 12, 1928 (45 Stat. 310) had the effect of a new promise to pay the debt and to extend the period of limitations.

The court there stated "this contention makes it necessary for us to consider the construction and effect of the provisions of the statutes upon which it is based." The court then said: "The act of May 31, 1924 * * amended the act of July 31, 1894 * * by adding thereto * * 'retired enlisted man * * shall not, within the meaning of this section, be construed to hold or to have held an office during such retirement.' * * On March 12, 1928 a statute was enacted providing that section 4 of the Panama Canal Act 'shall not be construed as requiring the deduction of the retired pay or allowances of any retired * * enlisted man of the army, navy * * from the amount of the salary or compensation provided by or fixed under the terms of the Panama Canal Act.'"

In that case the court held that although the question was not free from doubt the amendatory act provided only a legislative construction of prior acts and stated that the court's decision was made because no appropriation

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was provided by the act nor had any warrant been issued to the plaintiff Grant nor admission made that the Government is indebted to the claimant in a specific amount. The court held that the claimant must present proof of their case to the Court. Finally and of great importance, the court held that the pay of a retired enlisted man of the navy IS NOT OFFICIAL SALARY.

In the case here at bar the court again admits the involved act is susceptible of more than one interpretation. It is plain that here the common meaning of the plain language and construction accomplishes more than a legislative construction of prior acts in providing a new grant to plaintiff, and thereby effecting a legislative acknowledgment of the debt due to plaintiff and provides for an appropriation from the general funds of the treasury to pay the grant, the amount of the grant conditioned on the amount of official salary due. CAUDLE v. U.S., 72 C. Cl. 331.

Plaintiff Caudle sought payment of reimbursement in connection with housing allowance he advanced to his mother and to which he was entitled as an ensign in the navy. His claim was based on the act of June 10, 1922 (42 Stat. 628) as amended by the Act of May 31, 1924 (43 Stat. 250). His petition was filed on April 1, 1930.

Plaintiff there based his claim that he was not barred from recovery because of the provision in the act of May 31, 1924 which read: "that the provisions of this act shall be effective from and after July 1, 1922", contending that the amendatory act was a complete reconstruction of prior law and that it obliterated all laws prior to its passage and constituted a new right.

Plaintiff here does not contend that the Act of June 3, 1944 was a complete reconstruction of prior law and does not contend it obliterated all laws prior to its passage.

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Plaintiff does contend that the Act of June 3, 1944 conveys to plaintiff a new grant notwithstanding any law to the contrary. The choice of language and construction of the act here involved is strikingly different and so plain in its ordinary meaning that it is immediately apparent. In this act Section 1 provides for compensation to be paid at government expense for future services, while the grant pertaining to compensation due for services rendered prior to passage of the act is provided in Section 2 which also provides the necessary appropriations.

The Grant and Caudle cases should not be held as controlling of the issue for the reasons cited.

(14) DID NOT CONGRESS OVERCOME ANY ADVERSE EFFECT OF THE GRANT AND/OR CAUDLE DECISIONS IN THE LANGUAGE USED IN ENACTING PUBLIC 326 OF JUNE 3, 1944?

The court holds that had Congress intended to overcome the statute of limitations and being presumably aware of the Grant and/or Caudle decisions, that a different choice of language would have been used in enacting the new legislation to carry out that intent.

Plaintiff invites attention to the plain language of the act here involved which is entirely dissimilar to the statutes involved in those cases relied on by the court as controlling.

It should be clear that the construction of the act and the opening phrase of Sec. 2 coupled with the mandatory provisions therein providing a new grant to plaintiff, represents an entirely new choice of language and construction which is in no way comparable to that used in the statutes in the Grant and/or Caudle cases.

It is noteworthy that the Grant and Caudle cases were held to involve only a legislative interpretation of prior statutes by the amendatory acts

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relied on in those cases. No new situation arose in these cases as is present in the case here under consideration. The mandatory acts in the Grant and Candle cases did not contain a legislative acknowledgment of the debt due by the government such as is conveyed by the common meaning of the language of Section 2 of the Act here involved. Further, in those cases Congress by means of the mandatory acts there relied on was not engaged in extending relief to third parties such as is the case here and Congress here recognized such relief vitally affects the constitutional rights of petitioner unless the debt to petitioner be acknowledged in connection therewith.

The phrase "notwithstanding any provision of law to the contrary" insofar as plaintiff is aware has been used only once in a prior statute (Sec. 714 of Title 5, U.S.C.) and is believed never before to have been judicially interpreted.

It should be remembered that congress was giving special attention to an emergency in enacting the new law and that it intended a cure-all remedy, and as a remedial and retrospective statute should be interpreted liberally and on a broad, fostering consideration of the general interest. Cook v Seaton, 79 N.C. 305.

Clearly, the phrase "notwithstanding any provision of law to the contrary" as used in the involved act can be properly interpreted only in conjunction with a proper interpretation of the specific provisions of law as expressed by the remaining language of the sentence in which it is found and to which it relates.

(15) SHOULD PAYMENT FOR TRUE OVERTIME SERVICES RENDERED PRIOR TO THE ACT BE ALLOWED?

Plaintiff believes that Congress inadvertently neglected to include in the provisions of Section 2 authority to effect payment for true overtime

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services, the section providing only for payment of services rendered on Sundays and holidays prior to the act.

Plaintiff does not believe that Congress would have liberally provided for payment of Sunday and holiday services and intentionally have omitted payment for true overtime services.

Plaintiff furthermore does not believe that such a fine distinction was exercised by the Treasury Department in effecting any refunds of reimbursement to the involved carriers.

While plaintiff's claim involves much less than fifty dollars in connection with true overtime, as most of his services were rendered on Sundays and holidays insofar as this claim is concerned, plaintiff believes payment should be effected for true overtime services as well as for those rendered on Sundays and holidays.

(16) WHAT WAS THE TRUE NATURE OF THE EMERGENCY WHICH RESULTED IN PASSAGE OF THE NEW ACT?

The lower court has erroneously construed the emergency which caused the new legislation as relating to compensation for services to be performed in the future and which is provided by section 1 of the Act, failing to note that the private interests could quite easily pass the burden of future payments on to its patrons by increased toll.

The true emergency lay in the liability of the private interests to reimburse the government the compensation due for services already performed during the period of the controversy, from November 1929 to January 1944, in accordance with the Myers decision.

As an example, plaintiff shows the position of the Ambassador Bridge Co. at Detroit in 1944, since it was the opening of this bridge in 1929 which gave birth to the controversy. As so often occurs to companies of this character, by 1944 the company had been forced to reorganize twice, with consequent loss to the original investors.

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The bridge company presumably relied on the correctness of the interpretation of prior statutes by the administration, hence in 1944 it suddenly found itself confronted with an enormous debt for which no provision had been made. A rough estimate is shown here of the amount of that debt. An average of 26 men are believed by plaintiff to have been assigned to duty at the bridge each of the 59 Sundays and national holidays each year, the minimum wage of such employee being $11.67 for Sunday or holiday duty. Taking the average holiday or Sunday compensation due at the rate of $300 for each such day, the annual amount due is computed at $17,700. Fifteen years at the rate of $17,700 amounts to a gross total of $265,000. The same situation faced all other private interests.

The congressional committees which drafted the new legislation were fully aware of all these details, including the fact the employees had not been paid, and intended a cure-all remedy by the language of Section 2 by CERTIFYING to the employees the sums due them, and by relieving the private interests from the liability of reimbursement coincidental thereto.

Plaintiff has sent out various inquiries to authorities in the art of the English language, including the Chairman, Senate Judiciary Committee, and to Columbia College, etc., and all have agreed that plaintiff is correct in regard to the common meaning (plaintiff did not ask for a legal interpretation of either the law or the legislative intent in connection therewith) of the words found in the first sentence of Section 2 in the order of their grammatical arrangement, as set forth by plaintiff in this brief.

(17) WHAT EFFECT DOES SECTION 2 HAVE ON PLAINTIFF'S RIGHTS AS ESTABLISHED BY PRIOR LAW?

Prior to the Act of June 3, 1944 the statutes were intended, by reason of the necessity of reimbursement provided thereby, to pass the expense of the extra compensation on to the private interest requesting the service.

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For many years the administrative practice required reimbursement from the private interest prior to payment of the extra compensation to the employee. About 1936 the department began paying the compensation directly from the annual customs appropriation and when reimbursement was received the money was deposited to the credit of the appropriation from which it was drawn. In those cases where reimbursement was not made, the employee was required to refund the money for redeposit to the appropriation.

While the court in the Myers decision held the government to be liable for payment of the extra compensation regardless of whether reimbursement was received, the fact still remained that although the regular customs appropriation was used in the manner here related, such appropriation did not include any amount authorized by Congress to be used for payment of extra compensation.

It is obvious therefore that the administration could not extend the benefits of the Myers decision rendered in January, 1944, in effecting payment of compensation due for prior services, unless and until, an appropriation was passed for that purpose.

It is to be noted that Public Law 328 was enacted on June 3, 1944, prior to the enactment of the regular customs appropriation for the fiscal year of 1945. Such 1945 appropriation included for the first time an amount to be used in payment of extra compensation as A DIRECT RESULT OF THE NEW ACT. However, the department only requested sufficient funds to enable payment of extra compensation for services to be rendered during the 1945 fiscal year. By letter the department informed the Honorable Senator Arthur Vandenburg that payment of compensation for prior services could not be made until an audit of the accounts of all employees was completed and the necessary sum appropriated by Congress to carry out WHAT THE DEPARTMENT ACKNOWLEDGED TO BE THE INTENT OF THE NEW ACT, promising that a request for appropriation of the necessary amount would be filed with Congress in due course.

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The implication found in opinion 18 C. Cls. 382 is that promises of executive officers when made under express or implied authority of acts of Congress are binding on the United States.

IT IS OBVIOUS therefore that under prior statutes when the law was properly enforced plaintiff could not be deprived of his extra compensation merely because a request for appropriation had not been made to Congress, or because of the absence of funds dedicated for that purpose in the regular customs appropriation. IT IS EQUALLY OBVIOUS that because of the relief from reimbursement granted in section 2 which is dependent on the reassumption of the debt which the language clearly conveys, to certain classes of private interests here directly involved, plaintiff for the first time was required to depend on a congressional appropriation in connection with receipt of his extra compensation EARNED PRIOR TO THE ACT.

In view of the above no denial can be made of the fact that Section 2 for the first time ALTERS the responsibility of the department from that of requiring reimbursement to that of securing an appropriation to pay the debt for prior services defined by the section and further, for THE FIRST TIME in the legislative history of the statutes THE EXPENSE of the extra compensation was accepted by CONGRESS on behalf of the government. It is to be noted that the expense placed on the government by this Honorable Court's decision in the Myers case was not originally contemplated by Congress in the law as CONGRESS INTENDED ADMINISTRATIVE OFFICIALS TO PROPERLY REQUIRE REIMBURSEMENT in accordance with law which this Court held to be PLAIN, CLEAR, AND UNAMBIGUOUS.

"There is an implied contract to pay salary that has already accrued which is protected by the United States Constitution." 116 U.S. 131.

"Where an action is founded upon a statutory right, the statute of limitations begins to run from the time when the appropriation for the payment of the claim first became available". 26 C. Cls. 312. SINCE THIS CHANGE OF LAW BECAME EFFECTIVE JUNE 3, 1944, THE FIRST APPROPRIATION WHICH COULD HAVE BEEN

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AVAILABLE FOR PAYMENT WAS THAT FOR THE FISCAL YEAR 1945, and plaintiff clearly is not barred from recovery, having filed within a six year period.

"An unqualified and unconditional acknowledgment of a debt by Congress, not merely acknowledging the justice of the original claim, but showing positively that the debt was due in whole or in part, took the claim out of the statute of limitations." 4 C. Cls. 271.

(12) COMPARISON OF ADMINISTRATIVE GRANTS TO PRIVATE INTERESTS WITH TREATMENT OF PLAINTIFF

"When the words of a statute are not clear and admit of two interpretations, any doubt should be resolved in favor of the officer performing services under the statute." U.S. V. Myers, 3 Story 87, Fed. Cases No. 15,820; also 4 C. Cls. 141, 165; 23 C. Cls. 162.

Plaintiff is convinced that HIS interpretation of the law is correct BEYOND DOUBT.

The lower court indicates its own doubt of the correctness of its decision by its acknowledgments in the O'ROURKE case, and in the case here involved, THAT THE ACT IS SUSCEPTIBLE TO MORE THAN ONE INTERPRETATION.

Being doubtful, HAS the court resolved the doubt in favor of this plaintiff, the officer who performed the services under the statute? This suit establishes the character of the treatment accorded plaintiff.

Compare such treatment with the fact that the Myers decision clearly established the mandatory duty of administrative officers to require reimbursement for PAST as well as future services from railroads and those other classes of private interests which were not relieved by the new act from the requirement of reimbursement, and which classes involved by far the major part of the sum involved in the controversy.

After acknowledging in writing to Congress, in support of the bill which it caused to be introduced seeking to relieve railroads and other classes of

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interests from the requirement of reimbursement, that the Myers decision made it their mandatory duty to require such reimbursement, by suit if necessary, no further action insofar as is known to plaintiff, was taken, although the proposed bill was not enacted. Such neglect represents nothing short of an administrative grant of those sums which should be reimbursed.

(19) WHAT EFFECT DOES PARTIAL ALLOWANCE BY GENERAL ACCOUNTING OFFICE HAVE ON PLAINTIFF'S CLAIM?

Plaintiff has shown that the Comptroller General in 1950 granted a partial allowance on his claim, stating the action was taken by virtue of prior statutes, in accordance with the Myers decision, and refusing to recognize the provisions of Section 2 as new authority to pay the debt. For this reason he limited the allowance granted to the ten year period prior to the filing of plaintiff's second claim in January, 1946, ignoring the claim filed with him in 1936.

While the Comptroller General disavows being influenced by the new statute in his action of granting the partial allowance, plaintiff believes such action is merely an evasion for the purpose of limiting the payment insofar as possible, for it is significant that although the Myers decision was made in January, 1944, more than six years elapsed from that time before the allowance was finally made, four years after the second claim was filed in 1946.

CONCLUSION

Petitioner respectfully contends a proper interpretation of the Act of June 3, 1944 will result in a finding by this Honorable Court that he is not barred from recovery of the new grant provided by such act.

Wherefore, petitioner earnestly pleads with this Honorable Court that a proper interpretation of the law be effected by the issuance of a writ of certiorari by this Court to the Court of Claims for the purpose of awarding

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a favorable judgment to this petitioner of the sum claimed including interest and court costs.

Respectfully submitted,

Anthony P. Giessler

ANTHONY P. GIESSLER
Petitioner.

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No. [redacted]336

FILED
SEP 26 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY P. GIESSLER, PLAINTIFF))
v.))
THE UNITED STATES, DEFENDANT))

Case No. 336
Docketed Sept. 18, 1951

ON PETITION FOR WRIT OF CERTIORARI TO COURT OF CLAIMS

PETITIONER'S MOTION
TO PERMIT FILING SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY P. GIESSLER, PLAINTIFF))
v.)) CASE NO. 336
THE UNITED STATES, DEFENDANT)) DOCKETED SEPT. 18, 1951.

ON PETITION FOR WRIT OF CERTIORARI TO COURT OF CLAIMS

PETITIONER'S MOTION

TO PERMIT FILING SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT.

MAY IT PLEASE THE COURT AND THE HONORABLE JUDGES THEREOF: Because of the holding in the decision of the Court of Claims that the legislative history of the statute relied on by petitioner does not establish an intent of Congress to provide retroactive benefits to customs employees, petitioner requested his Congressman, Honorable Peter W. Rodino, Jr., to furnish him with copies of committee hearings and reports relating to said statute, although petitioner has stated his contention in his brief that the court is not empowered to resort to the legislative history of the act, the language of which plainly and clearly conveys the retroactive benefits claimed.

On September 19, 1951 Congressman Rodino wrote petitioner that he was able to furnish only a copy of the Senate committee hearings held on May 3, 1944, copies of the other documents not being available. Petitioner now respectfully requests permission to submit the attached supplement to his brief filed in support of his petition for writ of certiorari for the purpose of inviting attention to the significance of such hearings.

Respectfully submitted, Anthony P. Giessler

Anthony P. Giessler,
Petitioner.

To hold that the legislative history of the Act fails to show a Congressional intent to provide retroactive benefits to employees necessitates a holding that the legislative history fails to show a Congressional intent to benefit owners of bridges, etc., by waiving the requirement of reimbursement retroactively, and would nullify completely the provisions of the first sentence of section 2.

As a result of the Myers decision a holding that retroactive benefits were not intended to both employees and the owners would result in the absurdity in that the department would be required by law to force reimbursement of compensation due for service as previously received for the entire period of the controversy and then after reimbursement had been made to further require refunding of the reimbursement (because of the second sentence of Section 2) retroactively to January 6, 1941.

Attention is respectfully invited to the fact that the hearings on S. 1758 held on May 3, 1944 by the Senate subcommittee are entitled "OVERTIME PAYMENT OF CUSTOMS COLLECTORS ON INTERNATIONAL BRIDGES, ETC."

Mr. Herbert Gaston, Assistant Secretary of the Treasury, testified the situation which gave rise to the bill was caused by the Supreme Court's decision in the Myers case holding that customs employees must be paid for Sunday and holiday services by a certain method and at certain rates of pay, although the Treasury Department believed the government should bear all the cost of such payments rather than require reimbursement from others.

Senator Vandenberg asked Mr. Gaston whether under the Treasury's proposition the customs employees "would be robbed" of any advantage they won in the Supreme Court.

Mr. Gaston replied that the Treasury proposal would END ANY DISCRIMINATION between the treatment of those men who had sued and those who had not

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sued, and that the operators of the bridges and ferries should not be charged with the expense as the government should assume all expenses.

On page 7 of the report of hearings Mr. GASTON OFFERED THE SUGGESTION THAT THE PROPOSED BILL BE MADE RETROACTIVE TO MAY 1 with respect to the GOVERNMENT'S ASSUMPTION OF THOSE CHARGES. He said further, "it isn't a matter of an hourly decision here, or the protection of the Treasury Department or the Commissioner of Customs. IT IS A MATTER OF THE PROTECTION OF THE COLLECTORS OF CUSTOMS ON THE BORDER. THEY WOULD BE PERSONALLY LIABLE FOR ANY UNLAWFUL PAYMENTS".

May it please this Honorable Court, the statements just quoted definitely relate to retroactive benefits the customs employees and operators were entitled to, and it will be noted CONGRESS EFFECTED SUCH RETROACTIVE BENEFITS BY PLAIN AND CLEAR LANGUAGE AND WITHOUT ANY LIMITATION AS TO TIME DESPITE ANY LAW TO THE CONTRARY. Moreover, Assistant Secretary Gaston was not concerned with liability of unlawful payments by collectors of customs. WHAT HE WAS CONCERNED ABOUT WAS THE LIABILITY OF COLLECTORS AND THE DEPARTMENT FOR HAVING FAILED TO REQUIRE BONDS TO BE POSTED AS REQUIRED BY LAW DURING THE PERIOD OF THE CONTROVERSY. The brief filed by the National Customs Service Association (page 35 of the hearings) shows the Bureau of Customs was notified on September 15, 1931 their action in failing to require reimbursement was not in conformity with law.

Senator Vandenberg expressed himself (page 7 of the hearings) as definitely opposed to depriving the employees of any benefits resulting from the Supreme Court decision.

Attention is respectfully invited to the fact that the involved statute by assuming the expense of ALL prior expense RELIEVED THE COLLECTORS OF THE LIABILITY THEY HAD INCURRED OVER THE YEARS because of failure to require bonds to b e posted in conformity with law.

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Former Commissioner W. R. Johnson said (page 9 of the hearings): "The companion bill in the House GAVE THEM ONLY WHAT THEY GOT UNDER THE SUPREME COURT DECISION, BUT THE SENATE BILL DID GO BEYOND THAT AND GAVE THEM WHAT THE SUPREME COURT DENIED OF THEIR CLAIM."

Attention is also invited to the statement of Mr. Clarence E. Runals on behalf of the bridge operators which shows the distrust of such officers of the intentions of the Department officials, and to Senator Taft's remark (page 18 of the hearings) that the committee was agreed that bridges should be excepted from the requirement of reimbursement and that the only interest at that point was in fixing the pay question.

Mr. Johnson (page 20 of the hearings) said: "These men should bring a suit and they CERTAINLY, IN ALL JUSTICE AND EQUITY, ARE ENTITLED TO THE SAME PAY as the man who happens to be working on a bridge. They would be equalized under the Treasury bill."

Mr. Runals said (page 23 of the hearings) "Unlike the substitute Treasury bill, IT DOES NOT TAKE FROM THE EMPLOYEES ANY COMPENSATION TO WHICH THE SUPREME COURT HELD THEY WERE ENTITLED". On page 24 of the hearings Mr. Runals says the operators of the bridges are in entire accord with the employees' representatives in respect to all points and that THE BILL WILL AFFORD RELIEF FOR THE SERIOUS EMERGENCY BY MEETING THE DEMANDS OF ALL INTERESTED PARTIES.

Senator Vandenberg (page 27 of the hearings) said: "Why dont we accept this proposition ON THE TERMS OF THE SUPREME COURT DECISION? I DONT SEE ANYTHING WRONG WITH THAT".

It is clear that the legislative history and enforcement of prior statutes were considered by Congress in enactment of the new statute, and though perhaps the Congressional intent to provide retroactive benefits to employees and to the owners may not be mentioned in Congressional

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hearings and reports further than herein recited by petitioner, it is obvious that the principal problem which confronted Congress was the payment of the debt due employees at government expense rather than as a result of the requirement of reimbursement.

Insofar as future services were concerned petitioner invites attention to the fact that on Sunday, July 30, 1951 a total of 22,406 vehicles crossed the Ambassador Bridge at Detroit. Thus, an increase in 1944 of but one cent per vehicle in the bridge toll would have resulted in a profit to the bridge owners over and above the expense of the extra compensation of employees.

The objections of the bridge and ferry owners to acting as unpaid government collectors in connection with the inclusion in their toll charges to their patrons of the expense of the compensation may be likened to the attitude of Lillian Kellems who drew nationwide attention by her refusal to deduct from the salaries of her employees income tax withholding payments. May it please this Honorable Court to compare the Treasury's treatment of Miss Kellems to the action adopted in effecting payments due to petitioner.

May it please this Honorable Court, petitioner also invites comparison of the treatment he has received by the government, with that of employees in private business. Employers in private business are required by the United States Labor Relations Board to fulfill the terms of their con tracts with employees, and are forced by said Board, by suit if necessary, to pay those sums to which an employee may be entitled by virtue of overtime, Sunday or holiday work, in c onformity with existing law.

Petitioner concludes by contending he is not barred from recovery of the retroactive ben efits clearly prov ided by the provisions of Section 2 of the Act of June 3, 1944, havin g filed his petition within the six year statutory period.

Respectfully submitted,

Anthony P. Giesler

Anthony P. Giesler,
Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES

JESSE F. O'DONNELL, PETITIONER)
)
v.) No. 336,
)
THE UNITED STATES, RESPONDENT) Docketed September 10, 1951.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY P. GIESSLER, PETITIONER)

v.)

THE UNITED STATES, DEFENDANT)

Case No. 336,

Docketed September 18, 1951.

PETITIONER'S STATEMENT RELATIVE TO THE TIMELINESS OF HIS SUBMISSION OF PETITION FOR WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY P. GRESSLER, PETITIONER)
v.) Case No. 336,
THE UNITED STATES, DEFENDANT) Docketed September 18, 1951.

PETITIONER'S STATEMENT RELATIVE TO THE TIMELINESS OF HIS SUBMISSION OF PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE, AND JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

On the afternoon of October 17, 1951, petitioner received a letter from the Solicitor General of the United States in which it is stated the government is filing a memorandum in opposition to his petition for writ of certiorari, as above described, which suggests that the petition was filed out of time.

Petitioner assumed therefore, in the absence of a copy of said memorandum (petitioner gave the Solicitor General the courtesy of an extra copy mailed directly to that officer of all papers filed with this Honorable Court, but no copy of the memorandum mentioned by the Solicitor General was furnished with his letter) that it is the contention of the government that said petition should have been filed within 90 days from the date of original judgment of May 1, 1951, rather than within 90 days from the date the lower court acted (on July 9, 1951) on petitioner's motion petitioning the court to reopen the case under authority of Rule 54 (b) Court of Claims to consider plaintiff's assignment of error as shown in brief attached to said motion, and to certify the case to the Supreme Court under the provisions of Rule 40 of said Court for final decision.

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Because of the facts relating to the time during which petitioner filed his petition for writ of certiorari, said petitioner promptly responded to the Solicitor General's letter by addressing a communication to this Honorable Court and transmitting said communication through the Clerk of the Court. Said letter was received October 17th and the communication was mailed to the Clerk on the following day, October 18th, the letter of transmittal being inadvertently dated May 17, 1951 rather than October 17, 1951.

Having now received copies of the Solicitor General's memorandum, petitioner herewith presents a more detailed reply intended to replace petitioner's communication of October 17th.

WHEREFORE, petitioner submits the following statement outlining facts which establish that throughout this entire matter petitioner has exercised the utmost diligence in proceeding HERE SO to ensure that his actions were timely taken.

TIMELY FILING OF ORIGINAL PETITION IN COURT OF CLAIMS

Petitioner's case rests on a proper interpretation of the Act of June 3, 1944, known as Public No. 328. Having filed a claim with the Comptroller General in 1936 and again in 1946, petitioner found it necessary in 1948 to repeatedly urge the Comptroller General to act on the claim to enable petitioner to file suit in the Court of Claims should his claim be adversely acted upon in whole or in part, and finally succeeded in obtaining a partial allowance in April, 1950. Petitioner promptly filed his petition in the Court of Claims, No. 49653, on May 24, 1950, PRIOR TO SIX YEARS ELAPSING FROM THE DATE OF ENACTMENT OF THE

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STATUTE RELIED ON, HENCE PLAINTIFF IS NOT BARRED FROM RECOVERY AS DECIDED IN THE LOWER COURT.

PETITIONER'S MOTION FOR RETRIAL IN THE LOWER COURT

The lower court's opinion was made on May 1, 1951. No copy or notice of any kind was received by petitioner of such action until on May 28, 1951 an envelope bearing no postmark was received containing a number of printed copies of the decision. It did not occur to petitioner, acting pro se, that he could apply to the lower court for a continuance of time, and on noting that under Rule 53 of the Court of Claims that a motion for retrial must be filed within 30 days from the date of the decision, BELIEVED THAT BECAUSE OF THE FAULTY SERVICE IN RECEIPT OF THE DECISION HE WAS UNABLE TO BENEFIT BY TAKING ADVANTAGE OF THE PROVISIONS OF RULE 53.

Petitioner then noted that Rule 54 provides as follows: (underscoring mine)

(a) Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

(b) On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 5 (c); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a

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judgment or suspend its operation. This rule does not limit the power of the Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the Court. The relief provided by this rule shall be in addition to the relief available to the United States under Rule 53 (a) (2).

WHEREFORE, petitioner prepared a motion for retrial and promptly transmitted said motion with brief in support thereof to the Court of Claims by registered mail on June 12, 1951. A COPY OF SAID MOTION IS ENCLOSED AND IT WILL BE NOTED THAT PLAINTIFF CALLED THE COURT'S ATTENTION IN THE SECOND PARAGRAPH THEREOF TO THE FAULTY SERVICE WHICH HAD DEPRIVED HIM OF THE OPPORTUNITY TO TAKE ADVANTAGE OF THE PROVISIONS OF THE COURT'S RULE 53. It now seems to the petitioner that in all equity the lower court on noting the faulty service and the effects, should have instructed petitioner to amend his motion for retrial to include the provisions of Rule 53, regardless of its ultimate decision with respect to said motion; or, on the other hand, it would seem proper to petitioner that this Honorable Court take cognizance of the remarks contained in the second paragraph of said motion for retrial by holding that said motion was intended by petitioner as such in any event being a waiver of his rights under the provisions of Rule 53, and therefore THAT SAID MOTION WAS MADE UNDER THE PROVISIONS OF BOTH RULE 53 AND RULE 54, and therefore petitioner's motion for writ of certiorari is timely filed.

LACK OF POSTMARK ON ENVELOPE CONTAINING SERVICE

Petitioner thought it strange that the envelope received on May 28, 1951 containing the printed copies of the decision of May 1st did not bear any postmark when received, to the extent that on July 20th, I wrote to the

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Clerk, Court of Claims, transmitting said envelope for his inspection. In response, the Clerk wrote, in part, on July 23, 1951, as follows:

> "The original opinion in your case was rendered on May 1st and copies of same were mailed to you on that date. As to why the mail did not reach you until May 28th is a matter about which I have no knowledge and as to why the envelope did not contain a postmark is also a matter of which I have no knowledge."

This statement naturally causes a question to rise in plaintiff's mind as to whether printed copies of a decision are available for distribution immediately on the date the decision is rendered??? If not, it would be apparent that the Clerk could not have mailed copies of the decision on May 1st as claimed. Be that as it may, petitioner was (and is) firmly of the opinion that a correct interpretation of the law must result in a decision favorable to him, and eagerly awaited receipt of the opinion of the court WHICH WAS NOT RECEIVED UNTIL MONDAY MORNING, MAY 28, 1951.

APPENDIX TO RULES

OF THE SUPREME COURT.

On Page 7 of the Appendix to Revised Rules of the Supreme Court under Sec. 8 (a) it is provided, quote: "that for good cause shown either of such periods for applying for a writ of certiorari may be extended by a justice of the Supreme Court." Section 8 (d) provides, quote: "In any case in which the final judgment ** is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to apply for and to obtain a writ of certiorari from the Su-

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preme Court, the stay may be granted by *** a justice of the Supreme Court."

IN ACCORDANCE WITH THE ABOVE QUOTED STATUTE, PETITIONER HEREWITH PRAYS THIS HONORABLE COURT IN VIEW OF THE CIRCUMSTANCES SET FORTH HEREIN TO ORDER THE JUDGMENT OF THE LOWER COURT TO BE STAYED AND TO GRANT AN EXTENSION OF 60 DAYS FOR THE PURPOSE OF HOLDING THAT PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI WAS TIMELY FILED.

WHARTON'S LEGAL MAXIMS

Petitioner quotes the following maxims from the above named authority, having failed to find any adverse to his contention:

No. 52. "A good judge decides according to justice and right and prefers equity to shrich law.

No. 14. "A good judge will when necessary extend the limits of his jurisdiction."

No. 67. "Every ratification of an act already done has a retrospective effect, and is equal to a previous request to do it."

No. 76. "Anything contrary to reason is contrary to law."

No. 47. "Liberal construction of written documents are to be made because of the simplicity of the laity."

No. 46. "The most favorable construction is to be placed on general or doubtful expressions."

No. 100 "Let right be done though the heavens fall."

DIFFICULTIES ENCOUNTERED BY PETITIONER IN FILING HIS TIMELY PETITION FOR WRIT OF CERTIORARI.

Because of the experience above-described in the Court of Claims, petitioner decided to take every precaution that his petition for writ

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of certiorari be filed on time. Therefore, on June 20, 1951, I wrote to the Clerk of this Honorable Court as follows: (underscoring mine)

"Dear Sir:

On May 1, 1951 the Court of Claims filed an adverse decision and dismissed a petition which had been filed by the undersigned plaintiff, pro se.

Such opinion did not reach me until May 28, 1951.

On June 18, 1951, I mailed a motion under its Rule 54 (6) to the Court of Claims for retrial of the case to permit certification of the question of law to the Supreme Court under that Court's Rule 38.

Should such motion be dismissed I am desirous of filing a petition for writ of certiorari.

I note from examination of the rules of both courts that I must file an application for transcript of record with the lower court at least 30 days prior to filing the petition for the writ.

I believe from studying the rules that I have three months from the date of the lower court's opinion in which to file the petition for the writ.

Would you please promptly advise whether I am correct in that assumption as I do not wish to be barred from filing the petition for the writ?

In response I received the following letter:

"Mr. Anthony P. Giesaler, "June 22, 1951.
New York, New York.

Dear Sir:

"I have your letter of the 20th instant pertaining to the filing of a petition for writ of certiorari to review a decision of the Court of Claims. Such a petition must be filed here within ninety days of the date of entry of the judgment of the Court of Claims, or where there was a petition for rehearing or motion

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of that nature filed, then ninety days from the date of the denial of such motion.

There is no Rule of this Court fixing the time within which an application for the transcript of record must be filed. I believe there is such a Rule in the Court of Claims."

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

BY: (sgd) H. B. Wing,
Deputy."

I specifically invite the attention of this Honorable Court to the fact that in asking for this advice as to timely requirements I stated the method under which I was proceeding in the Court of Claims for a re-trial, and IT WILL BE NOTED THERE IS NOTHING IN THE REPLY WHICH I RECEIVED FROM THE COURT WHICH AT ALL INTIMATES THAT THE EXTENSION OF TIME MENTIONED IN THE COURT'S RESPONSE WAS PREDICATED ON AN ACTION TIMELY TAKEN IN THE LOWER COURT. The response states "ninety days from the date of the denial of such motion" without any qualification as to timely filing in the lower court in reference to a petition for rehearing or motion of that nature.

Petitioner has been forced to act pro se in this matter and has sought most diligently to comply with all rules, AND FEELS THAT CERTAINLY THE HONORABLE COURT SHOULD BE BOUND BY INFORMATION OF THIS CHARACTER AS ABOVE QUOTED AND AS DISPENSED BY THE COURT'S AGENT, THE CLERK.

WHEREFORE, PETITIONER EARNESTLY PRAYS THIS HONORABLE COURT TO GRANT THE WRIT OF CERTIORARI FOR THE PURPOSE OF REVIEWING THE ERRONEOUS DECISION OF THE LOWER COURT. THE DOUBT EXPRESSED BY THE LOWER COURT IN THE WORDS

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"THE ACT IS SUSCEPTIBLE TO MORE THAN ONE INTERPRETATION" STANDING ALONE WOULD SEEM TO BE SUFFICIENT TO WARRANT THIS HONORABLE COURT TO REVIEW THE OPINION. THE ERRONEOUS OPINION INVOLVES JUDICIAL LEGISLATION OF A NEW STATUTE AND OF A NEW PHRASE NEVER PREVIOUSLY JUDICIALLY INTERPRETED (the opening phrase of the first sentence of section 2 of the Act of June 3, 1944) and SUCH ERRONEOUS OPINION DISTORTS THE COMMON MEANING OF WORDS AND CREATES AMBIGUITY AND CONTRADICTIONS IN A STATUTE WHERE NONE EXIST WHEN A PROPER INTERPRETATION IN CONFORMITY WITH JUDICIAL PRACTICE OF LONG STANDING IS ADOPTED.

Respectfully submitted,

Anthony P. Giessler

ANTHONY P. GIESSLER,
Petitioner.

ENCLOSURE:

Copy of motion for rehearing.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 336

ANTHONY P. GIESSLER, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Government respectfully calls to the attention of the Court the following facts which suggest that the petition was filed out of time:

The judgment of the Court of Claims was entered on May 1, 1951. On June 15, 1951, petitioner filed a motion to "reopen the case under authority of Rule 54 (6) Court of Claims to consider plaintiff's assignment of error as shown in attached brief, and to certify the case to the Supreme Court under the provisions of Rule 40 of said Court for final decision." The Government opposed petitioner's motion on the merits, and on the ground that it was not timely filed

within 30 days from the entry of judgment as provided in Rule 53 (c) of the Rules of the Court of Claims. On July 9, 1951, the court below overruled petitioner's motion without more. The petition for a writ of certiorari was filed on September 18, 1951.

Since the petition was filed more than 90 days after the entry of final judgment, it is apparent that the petition was not filed within the time specified by 28 U. S. C. 2101 (c) unless the motion filed on June 15 tolled the running of the statutory period. If that motion be deemed a motion for a new trial, it was not timely filed under Rule 53 (c) of the Rules of the Court of Claims which provides that "a motion for a rehearing or a motion to alter or amend a judgment or a motion to grant a new trial shall be filed not later than 30 days after the entry of the judgment." Where such untimely motions are denied without more, it is well established that the running of the statutory period for the filing of a petition is not suspended. Cf. *United States* v. *Seminole Nation,* 299 U. S. 417, 421, and cases there cited. The same result obtains if petitioner's motion be considered a request for relief from the judgment under Rule 54 (b) (6) of the Rules of the Court of Claims.[1] Since that Rule provides that "a motion under this subdivision (b) does not affect

[1] Rule 54 (b) (6) is derived from Rule 60 (b) (6) of the Rules of Federal Procedure. See p. xii of the Rules of the Court of Claims.

the finality of a judgment or suspend its operation," the running of the 90-day period for filing a petition was not affected by the motion. Cf. *Dept. of Banking* v. *Pink,* 317 U. S. 264, rehearing denied, 318 U. S. 802.

It is respectfully suggested, therefore, that the petition should be denied on this ground.[2]

PHILIP B. PERLMAN,
Solicitor General.
HOLMES BALDRIDGE,
Assistant Attorney General.
SAMUEL D. SLADE,
BENJAMIN FORMAN,
Attorneys.

OCTOBER 1951.

[2] Should this Court be of the opinion that the petition was timely filed, it is respectfully submitted that the petition presents no novel or important questions warranting further review. Petitioner's arguments on the merits are fully answered in the opinion of the court below.

U. S. GOVERNMENT PRINTING OFFICE: 1951